



Federal Update for Feb. 13 – 19, 2016



DoD Lawsuit: Edgewood Update

Vet Victory in Testing Appeal

“Seven years ago, in an unprecedented legal action, Vietnam Veterans of America, along with San Francisco-based veterans organization Swords to Plowshares, joined with half a dozen veterans who ‘volunteered’ to participate in experiments that tested chemical and biological agents,” said John Rowan, National President of Vietnam Veterans of America. “We wanted to establish the ongoing responsibility of government to care for veterans whose health had been impacted because of their participation in the testing of more than 400 chemical and biological substances, including hazardous agents such as sarin and mustard gas and mind-altering drugs, including LSD.”

“Our concerns have now been validated,” said Rowan, in response to the news that the U.S. Court of Appeals for the Ninth Circuit has agreed with the trial judge, affirming an injunction ordering the U.S. Army to provide all former test subjects with any newly acquired information about the substances to which they were exposed and which might impact their health. The three-member appeals panel also concluded that the military still has an obligation to provide the test subjects with medical care.

“Under its own regulations,” said Rowan, “the Department of the Army has an ‘ongoing duty . . . to provide former test subjects with newly available information relating to their health’ and an ongoing duty to provide medical care to the test subjects ‘for injury or disease that is a proximate result of their participation in research.’ And, importantly, the full court denied the government’s petition for rehearing the appeal.”

“This decision is a clear victory for veterans,” noted Rowan. “It reaffirms our position that caring for veterans is part of the continuing cost of war. It is a testament to the convictions of the late Gordy Erspamer, who took on this case pro bono for his law firm, Morrison & Foerster, that the government cannot ride roughshod over its own regulations and the rights of veterans. And this case has succeeded in exposing the breadth and scope of some of the top-secret experimentation that the military first denied and then acknowledged had been conducted to the potential detriment of the health of thousands of test subjects.

“VVA owes a debt of gratitude to Morrison & Foerster for their unwavering support of veterans in this case,” Rowan said. “And we can hope that the military takes to heart the essential message of this decision, that they have a ‘duty to warn’ future human subjects of any potential health effects associated with any testing in which they may participate.” [Source: VVA Press Release | January 22, 2016 ++]

DoD Lawsuit ~ Cuban Vet Pension

Reinstatement Sought

Otto Macias was 19 when he left Cuba in the throes of a socialist revolution, enlisted in the U.S. Army and went to fight communists as a machine-gunner in Vietnam. He returned from battle in 1969 — broken and suffering from post-traumatic stress and schizophrenia, his family says. After years of hospitalization in New York, Macias, then a U.S. citizen, was well enough in 1980 to fly to Cuba to visit relatives he hadn't seen in decades. He never returned. As he stayed with family in Havana, Macias' hallucinations became so bad he required hospitalization and constant care from doctors or loved ones, his relatives say. Less than a year later, the U.S. Department of Veterans Affairs cut off his monthly pension of \$60 — a large sum for Cuba, where salaries today average about \$25 a month. The U.S. agency

never explained the cutoff, but the family's American lawyer says he's certain it was because of the United States' trade embargo on Cuba.

Now, Macias' family is suing the U.S. government seeking to reinstate the pension. They say President Barack Obama's loosening of the embargo offers the ailing 75-year-old a final chance to regain his benefits and win the recognition of the military service that his adopted country has denied him for 35 years. "It's about justice," said Macias' niece, Anita. "He was on the battlefield ... he dedicated his life to that. He mutilated his life. He didn't have a family because of it. They need to pay attention to him; they owe him an explanation. They need to recognize him." More than 200 Cubans who had worked at the Guantanamo Bay Naval Base and for the U.S. Merchant Marine during World War II successfully sued the U.S. government in 2001 when it would not pay benefits to people living in Cuba. The court ruling allowed Cubans who still had documents proving their service to receive benefits, said Carlos Enriquez, a Florida lawyer who represented the men or their survivors. "They sent them their money," Enriquez said. "They purchased cars, they purchased homes. It changed their lifestyle."

Macias lives with his brother in a modest apartment in a high-rise in east Havana. Psychologically stable after years of treatment but suffering from skin cancer, he spends his days running small errands like buying bread, then watching television or petting the family's graying dachshund. Macias declined to speak about his time in Vietnam. He said in Spanish that even though he feels more Cuban than American now, he remembers much of his time in the United States fondly and would enjoy visiting New York again if he were physically able. "I'd like to go back," he said. A spokesman for the Department of Veterans Affairs said he couldn't comment on pending litigation but noted the Treasury Department regulates payment of U.S. funds to other countries. The Treasury Department did not respond to a request for comment on Macias' case. Macias' lawyer, New Mexico-based Jason Flores-Williams, said the veteran's pension was clearly cut off because the U.S. embargo prohibits paying government benefits to anyone living on the island. But the lawyer said he believes legal changes stemming from Obama's 2014 declaration of detente with Cuba mean Macias has a good chance at winning his case.

The Obama administration has allowed U.S. companies to do limited business with the Cuban government and lets Americans send virtually unlimited sums of money to Cubans for purposes ranging from helping relatives to supporting a private business. "We would expect the Obama administration to support this litigation," Flores-Williams said. "It would be recognizing what (Macias) has done for the United States and bringing this man dignity in the last years of his life." A court win for Macias could create a precedent for other Cuban-Americans who move back to Cuba in the coming years and want to receive U.S. government benefits like Social Security payments. While the number of Cuban-Americans reclaiming Cuban citizenship remains small, it is likely to grow as travel and trade between the U.S. and Cuba become easier.

Moving back to the island may appeal especially to some Cuban-American retirees because of Cuba's free health care and relatively low cost of living, meaning that any cases with legal issues such as Macias' could eventually become more common. "The second you cross that 90 miles your benefits are terminated because you couldn't receive a check due to Treasury Department regulations," Flores-Williams said. "This is an opportunity for the Obama administration to show the Cubans that it's serious about human rights and change." [Source: Associated Press | Michael Weissenstein | February 9, 2011 ++]

VA Accountability Update

Judges Say No to Exec's Demotions

Congress has repeatedly criticized for infrequent firings within the department, even in the wake of nationwide scandals regarding patient wait times and records manipulations. Last month, VA Secretary Bob McDonald told members of the Senate Veterans' Affairs Committee that "we have enough authority to fire people" and that dismissing more employees would not improve services throughout the department. But he has also repeatedly promised to punish individuals found guilty of mismanagement and incompetence, a promise that lawmakers have repeatedly called into question. [Source: Military Times | Leo Shane | February 2, 2016 ++]

Veterans Affairs Deputy Secretary Sloan Gibson is promising new disciplinary action against a pair of senior executives accused of gaming the department's internal promotion system, after appeals panels have rejected plans to demote the pair. "We have charges that have been sustained, but with no punishment," Gibson told reporters 2 FEB. "I don't believe that reflects the intent of Congress in passing (new accountability) laws." He'll also launch an investigation into whether other high-ranking officials should also face punishment for a series of "judgment errors" that amounted to a revolving door of leadership moves which cost more than \$400,000 in relocation expenses, money lawmakers have insisted should be recovered from the employees.

That investigation will include interviews with Acting Undersecretary for Benefits Danny Pummill, and possible disciplinary action for his role in the cases. "If there is evidence that supports misconduct that was not available for my review previously, I will take action," Gibson said. Gibson would not say whether the new proposed punishments would leave the two embattled executives — Diana Rubens, Philadelphia Regional Office director, and Kimberly Graves, a Minnesota regional office director — in their current jobs. Rubens and Graves are at the center of a months-long controversy that has pitted VA leaders against the department's inspector general, congressional critics and their own employees.

An inspector general report released in late September charged Rubens and Graves with abusing their authority to reassign other directors to jobs elsewhere within VA, then moving into the vacant positions themselves. Investigators said the moves carried with them fewer responsibilities but no salary reductions, plus generous relocation payouts. Graves, who makes nearly \$174,000 a year, got more than \$129,000 to move from Philadelphia to Minnesota. Rubens, who makes \$181,000, received more than \$288,000 to move from Washington, D.C., to Philadelphia. Lawmakers have repeatedly called for their firings. But Gibson and other senior VA leaders have blasted the IG findings as politically motivated and baseless, and recommended demotions instead.

In two separate rulings over the last week, appeals judges denied those demotions, saying the mistakes made by the executives don't warrant that level of punishment. Part of the justification for that decision is that other equally culpable executives weren't disciplined at all for similar mistakes. Gibson said those comments and new evidence uncovered in the appeals process prompted him to look into whether Pummill — who oversaw both women — and others should face punishment. He also noted that neither judge refuted VA's assertion that the women made errors in judgement in involving themselves in job transfers that could be self-beneficial, which he called a validation of the department's moves so far. The new punishment could involve relocating both women to other jobs, but not demoting them from the senior executive service.

Gibson said he still has confidence in both of them as managers, but felt the moves were necessary because of the appearance of impropriety they created. He also dismissed the idea that his department needs more tools to handle employee accountability, noting that new rules approved by Congress in 2014 may have over-complicated this case. The appeals judge in Rubens' case noted that he would have preferred to "mitigate" punishment for the executive, but under current law he was allowed only to reverse the decision. The law passed by lawmakers was designed to speed the firing process by simplifying the notification and appeals process. Gibson called it "the pitfalls associated with a patchwork quilt of processes and legal standards." A decision on new punishment for Rubens and Graves, and possible punishment for other executives, is expected next week.

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VA Accountability Update

New Top Exec Punishment Idea

The Department of Veterans Affairs bosses have come up with a new idea on how to punish top executives at the agency – one that would keep control in the hands of VA leadership and exclude involvement of an outside appeals board, VA Secretary Bob McDonald said 10 FEB. The idea was floated by Deputy Secretary Sloan Gibson after suffering a bruising blow from the mandated appeals board that overturned three VA punishments in a row in the past few weeks. The actions by the Merit Systems Protection Board embarrassed the agency and frustrated Gibson, who said the board had taken away his ability to hold senior executives accountable.

McDonald, appearing Wednesday before the House Veteran's Affairs Committee to discuss the proposed VA budget for 2017, said Gibson's idea was to put all senior executives under the regulatory Title 38 statute – the same one used for VA medical professionals -- which would allow the agency to fire executives at will. "It gives us the ability to pay them more competitively and gives us more flexibility in punishing them," McDonald said. He said Gibson introduced the idea during a meeting Tuesday between the VA leadership and the House and Senate oversight committee leaders. The announcement marked the first time that the lawmakers and VA officials appeared to agree on accountability issues at an agency that has been plagued by scandal. For nearly two years, lawmakers on the oversight committees have been critical of VA leadership for failing to take executives to task, after details emerged of huge appointment and benefits wait times and of cover-ups that left veterans dying while languishing on hidden wait lists.

Rep. Jeff Miller (R-FL), the House Veterans' Affairs Committee, has been pressing VA leaders to agree to legislative reform of the civil service system that would allow for greater accountability. Until now, McDonald and Gibson have said they had the tools they needed. Miller reiterated his concerns Tuesday, saying he would be remiss if he didn't mention the frustrations he and other members of the panel felt following the MSPB reversals. "We've got to have an honest conversation about what's happening in the civil service system," he said. Other groups also railed against the system after the MSPB rulings. Last week, the board reversed the VA's attempt to fire Linda Weiss, the director of the Albany Stratton VAMC following revelations of mismanagement of patient care. That reversal came on the heels of earlier decisions by the board to undo disciplinary actions in high-profile cases against executives Diana Rubens and Kimberly Graves, for their actions involving their reassignments to different positions while collecting hundreds of thousands of dollars in relocation incentives. Gibson vowed last week that despite the board's reversal, he would not return Weiss to any position where she would be responsible for patient care.

American Legion National Commander Dale Barnett issued a statement 9 FRB, saying it was impossible to restore accountability to the VA when the board kept reversing its attempts to punish poor performers. "By tolerating bad behavior without even allowing a slap on the wrist, the MSPB is risking the lives of veterans," Barnett said. "The American Legion is calling on Congress, the Department of Veterans Affairs and the MSPB to work together to reform the procedures needed to finally bring accountability to a department that desperately needs it." Gibson's proposal will be incorporated into negotiations between the House and Senate oversight committees over a package of veteran's legislation that will go up for a vote later this year. The proposal could face some resistance, particularly from Sen. Bernie Sanders (D-MA) who was instrumental in ensuring that the appeals board had the final say on disciplinary cases against VA executives when the legislation was passed last year.

McDonald also outlined other issues he hopes Congress will consider for legislation this year, including 40 new proposals. Among them: allowing McDonald the authority to transfer up to 2 percent of discretionary funding across accounts; allowing for greater flexibility in job hours and pay for top medical staff so the VA can be more competitive in hiring, and restructuring the current process for benefits appeals, in which some cases have taken years or even decades to resolve. McDonald said he believed by restructuring the appeals process rather than just adding more staffing, the VA could ultimately cut the number of staff and expenditure while streamlining process and ending the backlog. "If we are serious about changing the VA and better serving veterans, we can't keep kicking the can down the road," McDonald said. Miller welcomed the proposal.

During two hours of testimony, McDonald faced down what has become routine criticism about accountability issues in other areas as well. Rep. Doug Lamborn (R-CO) grilled McDonald on why nobody was punished after an inspector general report last year found long wait times at the VA in Colorado Springs. McDonald said the report found bad training, not intentional malfeasance, and the VA has addressed the issue. Lamborn wasn't appeased. "Whether it was malicious or not, I think the records were falsified and someone needs to be fired," he said. Rep. Mike Coffman,

another Republican from Colorado, picked up the mantle, pressing McDonald on why the VA wouldn't get behind a legislative effort that would enable them to take back bonuses from executives who were found to have acted badly to get the money and why the VA wasn't getting rid of more executives who'd been found guilty of wrongdoing. Coffman assailed McDonald for "saying great things" but "not attacking the heart of the problem" and allowing bad behavior to continue. "You can't fire your way to excellence," McDonald said. "It might be a good start," Coffman replied. [Source: Stars and Stripes | Dianna Cahn | February 10, 2016 ++]

VA Secretary Update

Sen. Isakson Wants McDonald to Stay

An influential member of the U.S. Senate wants Veterans Affairs Secretary Bob McDonald to stay on in that role next year, no matter who becomes president. "Everything I've seen with Bob McDonald over the last 16 months, I've been very pleased with," said Sen. Johnny Isakson (R-GA) in an interview for C-SPAN's "Newsmakers" taped 11 FEB. Isakson chairs the Senate Veterans Affairs Committee. "I would certainly hope he would stay for continuity purposes, or the next president would pick him to stay. "The main thing we need at VA is continuity and commitment. Bob McDonald is a veteran, he ran a large business, he's committed to the I-CARE program at VA. I want to make sure that goes through, and I would recommend him."

Isakson's comments stem from questions about the presidential candidates' VA reform proposals. While on the campaign trail, several have labeled the department a failure and a disgrace, and called for a massive downsizing and outsourcing of VA programs. Isakson said his committee is looking at ways to expand outside care programs so veterans have quick access to treatment, but he rejected calls for privatization of key department functions and dismantling the system. "The preponderance of veterans I talk to love their VA care and want to keep it," he said. "They don't want it to be replaced or taken away from them. I don't find a lack of enthusiasm for VA among veterans." When asked about specific candidates, Isakson said committee activities under his predecessor, Sen. Bernie Sanders, I-Vermont., were "not as active as they should have been" in oversight on a host of department problems but credited him with helping push through the massive Choice Card legislation in 2014.

He also called VA criticisms from Republican frontrunner Donald Trump off-base and misinformed. "I don't know that he has served or used any VA services, so I think he is regurgitating what he's hearing in the press," he said. "A lot of the things being reported are things that happened before I came along or Secretary McDonald came along. ... The VA is making substantial changes." Isakson said he expects that work to continue with a new veterans omnibus package, rolling together a host of proposed health and benefits reform proposals. Whether that legislation will include VA plans to overhaul the benefits appeals process remains to be seen. Isakson said he supports working on changes to that system, but is not sure there will be enough time to reach compromise on a new plan this year. [Source: Military Times | Leo Shane | February 11, 2016 ++]

VA Medical Foster Homes Nursing Home Alternative

A Medical Foster Home (MFH) can serve as an alternative to a nursing home. It may be appropriate for Veterans who require nursing home care but prefer a non-institutional setting with fewer residents. MFHs are private homes in which a trained caregiver provides services to a few individuals. Some, but not all, residents are Veterans. VA inspects and approves all Medical Foster Homes. The Homes have a trained caregiver on duty 24 hours a day, 7 days a week. This caregiver can help the Veteran carry out activities of daily living, such as bathing and getting dressed. VA ensures that the caregiver is well trained to provide VA planned care.

You will continue to receive Home Based Primary Care services in the Medical Foster Home. You may also receive the following services from the Medical Foster Home caregiver.

1. For Veterans:
 - Help with your activities of daily living (e.g., bathing and getting dressed)
 - Help taking your medications
 - Some nursing assistance, if the caregiver is a registered nurse

- All of your meals
- Planned recreational and social activities

2. For Caregivers:

- Peace of mind when Home and Community Based Services can no longer meet the Veteran's needs at home
- A place to enjoy spending time with the Veteran

You can use the below Shared Decision Making (SDM) Worksheet to help you figure out what long term care services or settings may best meet your needs now or in the future. There's also a Caregiver Self-Assessment (CSA) worksheet. It can help your caregiver identify their own needs and decide how much support they can offer to you. Having this information from your caregiver, along with the involvement of your care team and social worker, will help you reach good long term care decisions.

- SDM: http://www.va.gov/geriatrics/guide/longtermcare/Shared_Decision_Making_Worksheet.pdf
- CSA: http://www.va.gov/geriatrics/guide/longtermcare/Caregiver_Self_Assessment.pdf

Your physician or other primary care provider can answer questions about your medical needs. Some important questions to talk about with your social worker and family include:

- How much assistance do I need for my activities of daily living (e.g., bathing and getting dressed)?
- What are my caregiver's needs?
- How much independence and privacy do I want?
- What sort of social interactions are important to me?
- How much can I afford to pay for care each month?

Medical Foster Homes are not provided or paid for by VA. To be eligible for a MFH you need to be enrolled in Home Based Primary Care, and a Home needs to be available. Your VA social worker or case manager can help you with eligibility guidelines for Home Based Primary Care and Medical Foster Home care. Also, with locating one and assist with making the arrangements. You will have to pay for the MFH yourself or through other insurance. The charge for a MFH is about \$1500 to \$3000 each month based on your income and the level of care you need. The specific cost is agreed upon ahead of time by you and the MFH caregiver. Talk with a VA social worker/case manager to find out if you are entitled to additional VA benefits that will help pay for a Medical Foster Home

If a Medical Foster Home seems right for you, your VA social worker can help you locate one and assist with making arrangements. Also, at http://www.va.gov/GERIATRICS/Guide/LongTermCare/Locate_Services.asp you can use the Locate Services and Resources page to help you locate Medical Foster Homes. [Source: Geriatrics and Extended Care http://www.va.gov/geriatrics/guide/longtermcare/medical_foster_homes.asp# Feb 2016 ++]

VA Hospital Quality of Care Update

2010-2013 Study Results

Veterans' hospitals compare pretty favorably with others when it comes to treating older men with three common conditions — heart attacks, heart failure and pneumonia, according to a study on death rates and readmissions. Chances for dying or being readmitted within 30 days of treatment for those conditions varied only slightly for patients hospitalized within the VA system versus at outside hospitals, the 2010-2013 study found. The results contrast with longstanding concerns about challenges facing veterans and the VA health system, including quality questions and long waits for care. They suggest that VA hospitals "are still able to deliver high-quality care for some of the sickest most complicated patients," Dr. Ashish Jha, a Harvard health policy expert, said in an editorial published 9 FEB with the study in the Journal of the American Medical Association.

The study analyzed claims for men aged 65 and older treated at 104 VA hospitals and for male Medicare patients treated at 1,513 non-VA hospitals nationwide. Each comparison involved at least 7,900 patients. At VA hospitals, death rates were marginally lower after a heart attack — 13.5 percent vs 13.7 percent; and for heart failure — 11.4 percent vs 11.9 percent. They were slightly higher for pneumonia — 12.6 percent vs. 12.2 percent at non-VA

hospitals. Readmission rates ranged from about 17 percent to 25 percent for the three conditions and were highest at VA hospitals, but only by about 1 percentage point or less. "Both groups are now working on quality in ways they didn't a decade ago and the levels of good performance are quite comparable" for the conditions studied, said lead author Dr. Harlan Krumholz, a Yale University cardiologist and researcher.

The efforts include online sites allowing consumers to compare patient outcomes for the three conditions studied at VA hospitals and others nationwide, and growing use of pilot-style checklists during hospital procedures to verify appropriate treatment. Still, Krumholz said the overall results aren't ideal. "Readmissions are still way too high and we haven't made enough progress there," he said. Lower readmission rates at non-VA hospitals may partly reflect the impact of financial penalties the Medicare system introduced in 2012 to reduce readmissions. But also, VA patients tend to be sicker and travel farther for care, which could lead to more readmissions, the researchers said.

Dr. David Shulkin, the VA's undersecretary for health, said the results are not surprising and they debunk "the impression that the VA has fallen behind. This really is validation" that VA employees "are really doing a very good job and keeping focused on doing what's right for veterans." Krumholz noted that the study doesn't address quality of care for young patients, women and those with conditions other than those studied. Jha, the editorial author, said other important questions about VA hospitals remain, including timeliness of care and whether veterans perceive that they are treated with respect. [Source: ABC News | Lindsey Tanner | February 9, 2016 ++]

VA Appeals Update

Regional Office Appeals Process

Most Veterans are aware that claims are rated at the VA regional office (RO), usually in their state. However, a lot of Veterans are not aware that appeals are also reviewed at the regional office before they go to the Board of Veterans' Appeals (Board). Following addresses the RO's appeal process, your role in the process, and the things you can do to help expedite your appeal.

Appeals at the local regional office level. Once a VA office issues its decision on your claim, you have one year from that date to file an appeal. Read the decision letter closely: it will tell you why VA made the decision it did. If you are unsure why or how VA made its decision, ask a Veterans service officer for help. You can also call VA or go to your regional office. If you disagree with VA's decision for any reason – the effective date of your award, the rating percentage you were given or the reason you were denied – you should file a Notice of Disagreement (NOD). If VA included VA Form 21-0958, Notice of Disagreement, with its decision, you must use that form to file your NOD – it is mandatory. At <http://www.vba.va.gov/pubs/forms/VBA-21-0958-ARE.pdf> you can access one if necessary. The NOD is the start of your appeal.

Appeal Life Cycle. Once you file your NOD, you have several rights: you can submit new evidence, ask for a de novo review where a decision review officer (DRO) takes a "fresh look" at the claim, reviewing the entire claims file and/or ask to testify and present evidence at a telephone or in-person hearing. VA encourages Veterans who choose to have a hearing to opt for an informal teleconference hearing, since these can be scheduled much faster. Many appeals are favorably resolved at these early stages. Make sure you file your NOD on time: your right to appeal ends a year from the date of VA's decision. When you file your NOD, you have a choice: either select a traditional review or a de novo review by a DRO. You can make this choice right on your NOD when you start your appeal. If you don't make a decision, VA will mail you a notice of this right, and you'll have 60 days to respond, so answer right away. Thus:

- If you are dissatisfied with the decision on your claim, file your appeal right away
- When you file your NOD, submit any new evidence you have; waiting until later on in the process can delay your appeal
- Also, when you file your NOD, state if you want a DRO review or a traditional review – this will also save you time on your appeal

Traditional Review. If you opt for a traditional review, a member of the RO appeals team reviews the decision on your claim to determine if it was processed correctly; if it was, the RO will issue you a Statement of the Case (SOC). An SOC lists the applicable laws and regulations related to that decision, all the evidence that was considered in making the decision and a detailed explanation of the decision VA made.

De novo Review. A de novo review is your other option. de novo, which means “new,” or “fresh look,” is a Latin term used by lawyers. In a de novo review, a DRO, who is a senior-level, highly experienced claim processor, looks at all the evidence of record (your entire claims file, including any new evidence you’ve submitted). The DRO can grant your appeal, deny your appeal and issue an SOC, or order additional development (such as a new medical exam or a request for additional medical records), if warranted. Unless the RO grants the full benefit you are seeking, you will receive an SOC. This means EVEN if the RO grants your claim, you may receive an SOC, allowing you to continue the appeal. For instance:

- If you were appealing service connection for tinnitus (ringing in the ears) and the RO granted this on appeal at 10 percent, the RO appeals team will ONLY issue a rating decision since 10 percent is the highest rating you can receive for tinnitus. This means the appeal has been granted in full. You will not receive an SOC.
- If you were appealing VA’s 10-percent rating for arthritis in your lower back because you believe you should be rated higher, but the RO appeals team disagrees and continues your 10-percent rating, you will
- If you were appealing VA’s 10-percent rating for arthritis in your lower back because you believe you should be rated higher, and the RO appeals team agrees and increases your rating to 20 percent, you will receive BOTH a new award decision explaining why VA increased your disability rating AND an SOC detailing how VA arrived at its decision, including why you were not entitled to a rating higher than 20 percent.

You have 60 days from the date the SOC is mailed to you to file a VA Form 9, Appeal to the Board of Veterans’ Appeals, if you wish to continue your appeal to the Board. At <http://www.va.gov/vaforms/va/pdf/VA9.pdf> it can be completed online and downloaded for mailing. Any time you submit more evidence after the SOC or before the Form 9, VBA must conduct another review of the case and issue another SOC – this one called a supplemental statement of the case (SSOC) that includes the additional evidence – or a rating decision, if the additional evidence allows VBA to grant the appeal. This must be done each time you submit new evidence after the SOC. I have seen appeals with four or five SSOCs. Keep in mind, each time you submit new evidence it triggers a new review. It’s like starting all over again in the appeals process. Each new SSOC can add up to 400 days to the appeal, so my best advice is, submit all available evidence to support your appeal when you file your NOD.

On the Form 9, you can request an optional hearing before a judge at the Board, who will decide your appeal. A hearing is not required and will delay a final decision, but if you want a hearing, you can choose a video-teleconference hearing, a travel board hearing at your local RO, or an in-person hearing in Washington, D.C. If you want a hearing, your best bet is to opt for the video-teleconference hearing, since it can be scheduled much quicker than other types of hearings. This is because you don’t have to travel to Washington, D.C. and you don’t have to wait for a judge to travel to your RO. You still get the benefit of representation and talking to a judge face-to-face – though virtually, like on Skype or on FaceTime. Once you submit your Form 9, the RO appeals team reviews your appeal to ensure all actions were completed and that it is ready to go to the Board. Once ready, the local RO will certify and transfer your appeal to the Board in Washington, D.C. [Source: VAnAge Point | Catherine Trombley | February 10, 2016 ++]

VA Budget 2017

\$182.3B Proposed

In his FY 2017 budget, President Obama is proposing \$182.3 billion for the Department of Veterans Affairs (VA). Funding will continue to support the largest transformation in VA history; expand access to timely, high-quality health care and benefits; and advance efforts to end homelessness among Veterans. “VA has before it one of the greatest opportunities in its history to transform the way it cares for our Veterans who nobly served and sacrificed for our Nation,” said VA Secretary Robert A. McDonald. “As we work to become a more efficient, effective and responsive, Veteran-centric Department, we can’t do it alone; we need the help of Congress. This year, VA submitted over 100 legislative proposals, including 40 new proposals to better serve Veterans. Our goal is provide the best care to our Veterans while removing obstacles or barriers that prevent them from getting the care they deserve.”

The FY 2017 budget includes \$78.7 billion in discretionary funding, largely for health care and \$103.6 billion for mandatory benefit programs such as disability compensation and pensions. The \$78.7 billion for discretionary spending is \$3.6 billion (4.9 percent) above the 2016 enacted level, including over \$3.6 billion in medical care collections from

health insurers and Veteran copayments. The budget also requests \$70.0 billion, including collections, for the 2018 advance appropriations for medical care, an increase of \$1.5 billion and 2.1 percent above the 2017 medical care budget request. The request includes \$103.9 billion in 2018 mandatory advance appropriations for Compensation and Pensions, Readjustment Benefits and Veterans Insurance and Indemnities benefits programs in the Veterans Benefits Administration.

Health Care - With a medical care budget of \$68.6 billion, including collections, VA is positioned to continue expanding health care services to its millions of Veteran patients. Health care is being provided to over 922,000 Veterans who served in Operation Enduring Freedom/Operation Iraqi Freedom/Operation New Dawn/Operation Inherent Resolve (OIR) and Operation Freedom's Sentinel (OFS). Major spending categories within the health care budget are:

- \$12.2 billion for care in the community;
- \$8.5 billion for long-term care;
- \$7.8 billion for mental health;
- \$1.6 billion for homeless Veterans;
- \$1.5 billion for Hepatitis-C treatments;
- \$725 million for Caregivers;
- \$601 million for spinal cord injuries; and
- \$284 million for traumatic brain injuries.

Expanding Access - The President's Budget ensures that care and other benefits are available to Veterans when and where they need them. Among the programs that will expand access under the proposed budget are:

- \$12.2 billion for care in the community compared to \$10.5 billion in 2015, a 16 percent increase;
- \$1.2 billion in telehealth funding, which helps patients monitor chronic health care conditions and increases access to care, especially in rural and remote locations;
- \$515 million for health care services specifically designed for women, an increase of 8.5 percent over the present level;
- \$836 million for the activation of new and enhanced health care facilities;
- \$900 million for major and minor construction projects, including funding for seismic corrections, two new cemeteries, and two gravesite expansions; and
- \$171 million for improved customer service by providing an integrated services delivery platform.

Improving the Efficiency of Claims Processing - The President's Budget provides for continued implementation of the Veterans Benefits Administration's (VBA) robust Transformation Plan -- a series of people, process, and technology initiatives -- in 2017. This plan will continue to systematically improve the quality and efficiency of claims processing. Major claims transformation initiatives in the budget invest \$323 million to bring leading-edge technology to claims processing, including:

- \$180 million (\$143 million in Information Technology and \$37 million in VBA) to enhance the electronic claims processing system -- the Veterans Benefits Management System (VBMS); and
- \$143 million for Veterans Claims Intake Program (VCIP) to continue conversion of paper records, such as Veterans' medical records, into electronic images and data in VBMS.

In addition, the President's Budget supports increasing VBA's workforce to address staffing needs so it can continue to improve the delivery of benefits to Veterans. As VBA continues to receive and complete more disability compensation rating claims, the volume of non-rating claims correspondingly increases. The request for \$54 million for 300 additional full-time equivalent employees (FTE) and claims processing support will allow VBA to provide more timely actions on non-rating claims.

Appeals Reform - The current appeals process is complicated and ineffective, and Veterans on average are waiting about 5 years for a final decision on an appeal that reaches the Board of Veterans' Appeals, with thousands waiting much longer. The 2017 Budget proposes a Simplified Appeals initiative -- legislation and resources -- to provide Veterans with a simple, fair, and streamlined appeals process in which they would receive a final appeals decision within

one year from filing an appeal by 2021. The Budget requests \$156 million and 922 FTE for the Board, an increase of \$46 million and 242 FTE over 2016, as a down payment on a long-term, sustainable plan to improve services to Veterans.

Ending Veterans Homelessness - The Administration has made the ending of Veteran homelessness a national priority. The Budget requests \$1.6 billion for programs to prevent or reduce Veteran homelessness, including:

- \$300 million for Supportive Services for Veteran Families (SSVF) to promote housing stability;
- \$496 million for the HUD-VASH program, wherein VA provides case management services for at-risk Veterans and their families and HUD provides permanent housing through its Housing Choice Voucher program; and
- \$247 million in grant and per diem payments that support temporary housing provided by community-based organizations.

MyVA - The 2017 budget continues the largest Department-wide transformation in VA's history through the MyVA initiative, which is changing VA's culture, processes, and capabilities to put the needs, expectations and interests of Veterans and their families first. MyVA has developed five objectives fundamental to the transformation of VA: 1) improving the Veterans' experience; 2) improving the employee experience; 3) improving support service excellence; 4) establishing a culture of continuous performance improvement; and 5) enhancing strategic partnerships. To aid in this transformation, the Department established the Veterans Experience Office (VEO). The VEO will represent the voice of Veterans and their families in Departmental governance; design and implement customer-centric programs to make interactions with VA easier; and support VA's "mission owners" in carrying out MyVA improvements across the system.

Veterans Choice Act - The Veterans Choice Act provides \$5 billion to increase Veterans' access to health care by hiring more physicians and staff and improving the VA's physical infrastructure. It also provides \$10 billion through 2017 to establish a temporary program (the Veterans Choice Program) to improve access to health care by allowing eligible Veterans who meet certain wait-time or distance standards to use eligible health care providers outside of the VA system. In 2017, VA will use the Choice Act funds in concert with annual appropriations to meet VA staffing and infrastructure needs and expand non-VA care to Veterans who are eligible for the Veterans Choice Program. VA plans to spend \$1.4 billion in 2016 and \$853 million in 2017 to support more than 9,700 new medical care staff hired through the Choice Act; \$980 million in 2016 and \$116 million in 2017 to improve VA facilities.

Other Key Services for Veterans -

- \$286 million to administer VA's system of 134 national cemeteries, including additional funding for operations of new cemeteries and the National Shrine program to raise and realign gravesites;
- \$4.3 billion for information technology (IT), including investments to strengthen cybersecurity, modernize Veterans' electronic health records, improve Veterans' access to benefits, and enhance the IT infrastructure; and
- \$125 million for state cemetery grants and state extended care grants.

Enhanced Oversight of VA's programs - The 2017 budget requests an additional \$23 million and 100 FTE for the Office of Inspector General (OIG) to enhance oversight and assist the OIG in fulfilling its statutory mission and making recommendations that will help VA improve the care and services it provides.

VA operates the largest integrated health care system in the country; the tenth largest life insurance program in the Nation, with \$1.3 trillion in coverage; monthly disability compensation, pensions, and survivors benefits to 5.3 million beneficiaries; educational assistance or vocational rehabilitation benefits and services to nearly 1.2 million students; mortgage guaranties to over 2 million homeowners; and the largest cemetery system in the Nation. Information about VA's 2017 budget submission and links to related documents may be found at www.va.gov/budget/products.asp. Information about the President's budget may be found at <https://www.whitehouse.gov/omb>. [Source: VA Press Release | February 9, 2016 ++]

VA Budget 2017 Update

Lawmakers Eye Ever-Growing Budget

Lawmakers warned Veterans Affairs officials 10 FEB not to assume they'll continue to see their budget grow unchecked, especially in light of recent criticisms of department spending. The department has seen budget increases each of the last 16 years, even as funding of other government programs has held steady or been reduced. When lawmakers passed spending caps on federal programs in 2011, Veterans Affairs programs were exempt. In fiscal 2001, the VA budget totaled \$45 billion. The president's budget request for fiscal 2017 is four times that, topping \$177 billion, with \$75 billion for discretionary funding alone.

Administration officials have said the increases reflect the growing demands on the department in the wake of the wars in Iraq and Afghanistan, and are designed to correct longstanding shortfalls in the department. But congressional leaders warned that those cost corrections may be coming to an end. "This budget request is almost double the VA budget in 2009, and since then, the VA has been plagued by scandals and mismanagement and has consistently proven its inability to use its existing resources," Senate Veterans' Affairs Committee Chairman Johnny Isakson (R-GA) said in a statement. "The solution to fixing a broken agency is not simply giving it more money."

In a VA budget request hearing across Capitol Hill, House Veterans' Affairs Committee Chairman Jeff Miller (R-FL) promised to "fight to ensure VA has the resources it needs, but given recent problems, this budget request will receive every bit of the scrutiny it is due." He referenced a billion-dollar cost overrun for plans to build a new VA hospital near Denver and related budget shortfalls last year that caused Congress to pass emergency legislation to keep the department's programs operating. "But in classic VA fashion, I'm not aware of a single employee that has been held accountable for these unprecedented failures," he said. Other committee members lamented lingering problems with veterans' access to health care appointments, disability benefits claims and middle management mistakes.

VA Secretary Bob McDonald said the budget proposal does include a host of efficiencies and reforms, including proposals to simplify the management structure within the department and close excess facility space. "We're providing more care, more access to care," he said of the budget increases. "We're dealing with more disability claims. We're serving a customer that has more demands." The annual budget process is expected to last well into the fall, although leaders from both chambers have expressed hope that appropriations work could be completed before the November presidential election. [Source: Military Times | Leo Shane | February 10, 2016 ++]

VA Mustard Agent Claims Update

VA Failure to Help Exposed Vets

Sen. Claire McCaskill (D-MO) had strong words for Department of Veterans Affairs Secretary Robert McDonald on 4 FEB regarding the VA's failure to compensate thousands of World War II veterans who were exposed to mustard gas. McCaskill has been requesting information from the agency ever since NPR reported the VA's mishandling of disability benefits for the veterans, some of whom are now in their late 80s and early 90s, and still waiting. McCaskill said the VA has "blown past deadlines for briefings and documents" and "shown no urgency in addressing 70 years of appalling mistreatment of these men, many of whom have already passed away." In a statement to NPR, the VA says it is conducting "extensive research to collect and validate the data and information Senator McCaskill has requested. VA is also looking to conduct additional outreach to any veterans newly identified as a result of this research."

Last summer, NPR revealed that despite promises made in the early 1990s, the VA failed to contact more than 3,000 veterans who were exposed to large amounts of mustard gas in secret military experiments and that the agency denied the veterans compensation based on a lack of documentation, even though such documentation was not available to them. Since the report was published, more than two dozen members of Congress have written to McDonald demanding an explanation for the failures and calling for the swift disbursement of benefits for veterans who are still living. In her letter Thursday, McCaskill wrote: "I am trying to help the remaining veterans before time runs out. This makes the VA's refusal to provide answers in a timely fashion all the more unacceptable." [Source: NPR | Caitlin Dickerson | February 4, 2016 ++]

VA Heart Health Month

Make A Date

As VA Goes Red for heart health month, women Veterans are encouraged to work with their primary care providers to make a personal plan for heart healthy living. If women Veterans haven't had a primary care visit in a year, they are encouraged to "make a date." Heart disease is the number one killer of women and high blood pressure, diabetes, high cholesterol, or smoking can increase your risk of heart disease. Ignore the myths — Here are the facts

- Heart disease affects women of all ages. For younger women, the combination of birth control pills and smoking boosts heart disease risks by 20 percent.
- Even if you're a yoga-loving, marathon-running workout fiend, your risk for heart disease isn't completely eliminated.
- Factors like cholesterol, eating habits and smoking can counteract your other healthy habits.
- Sixty-four percent of women who die suddenly of coronary heart disease had no previous symptoms.

Because these symptoms vary greatly between men and women, they're often misunderstood. Media has conditioned us to believe that the telltale sign of a heart attack is extreme chest pain. But in reality, women are more likely to experience shortness of breath, nausea/vomiting, back or jaw pain, and sometimes unexplained excessive fatigue. Reviewing Heart Health with your Primary Care Provider At your check up with your primary care provider you should have a discussion about your cardiovascular health and risk factors. Since heart disease is the number one killer of women, and kills more women than all forms of cancer combined, your primary care visit will emphasize cardiovascular risks and making a personal plan for heart healthy living. The American Heart Association estimates that 80 percent of all cardiovascular disease may be preventable, and it's always better to prevent it than treat it after it becomes life threatening. [Source: Veterans Health | Sally Haskell | February 2, 2016 ++]

VA Vet Choice Program Update

Implementation | Systemic Failure

Sen. Mark Kirk (R-IL) wants to know how the Department of Veterans Affairs (VA) will fix a key health program, calling its implementation a systemic failure. "I consistently hear reports that the Department of Veterans Affairs is delaying the process of veterans' requests to use the Choice Act, delaying the approval of provider participation in Choice, and delaying payments to participating providers," he wrote in a letter to VA Secretary Bob McDonald released 5 FEB. Under the Choice Act, veterans who can't get an appointment within 30 days are supposed to be able to use the Veterans Choice List, which gives them access to private non-VA care. But Kirk pointed to a VA OIG report released 4 FEB on a Colorado Springs, Colo., facility.

The report found that out of 288 veterans who had wait times of more than 30 days at the facility, all 288 were either not added to the Veterans Choice List or were added later than they should have been. Kirk said that he wants to know "how the VA plans to address these issues and ensure that all veterans have access to the Choice Act envisioned by Congress with a comprehensive provider network," including addressing reports that the VA isn't providing "timely payments" to healthcare providers under the Choice program. The VA noted in the OIG report that it's taken steps to address the findings.

The VA's Veterans Health Administration has been repeatedly under the congressional spotlight since the department faced a months-long scandal over allegations that VA officials manipulated appointment wait time data to downplay how long veterans were waiting for healthcare. "Given the VHA's demonstrated inability to provide even basic care, let alone comprehensive services, I find it particularly disappointing that VHA continues to stymie the private sector's attempts to address veteran patient needs," he added in his letter to McDonald. Kirk is the latest lawmaker who supported the Choice Act — formally known as the Veterans Access, Choice and Accountability Act — but has voiced concern about its implementation. [Source: The Hill | Jordain Carney | February 5, 2016 ++]

VA Vet Choice Program Update

Ruining Some Vet's Credit

Some veterans are seeing their credit ruined by using the Veterans Choice health program because the Veterans Affairs Department is not reimbursing participating physicians promptly, forcing them to bill their veteran patients who often can't pay. Veterans advocates and House lawmakers said 11 FEB that veterans using the community care program face long delays in treatment and bad credit because physicians are waiting up to six months for reimbursements from VA and are demanding payment from patients, often forwarding the bills to collection agencies.

- Rep. Raul Ruiz (D-CA) said one of his constituents sought care for pain and orthopedic problems through the Veterans Choice program, but VA did not reimburse the specialists in a timely manner, forcing the veteran to reschedule needed surgeries and deal with aggressive collection agents. "Now this veteran has damaged health and damaged credit due to the VA," Ruiz said during a House Veterans' Affairs subcommittee hearing. "This damage that veterans suffer due to the VA's reimbursement system is irreparable and unacceptable."
- In another case, a veteran in Saginaw, Michigan, needed follow-up care for an eye appointment through Veterans Choice. But while the initial appointment was approved, the needed sight-saving treatment was not. Since approval and payment were delayed, the providing clinic stopped treatment and demanded money from the patient before they would continue, Veterans of Foreign Wars senior legislative associate Carlos Fuentes said. To solve the issue, VFW contacted the Veterans Choice contractor Health Net Federal Services but was told that treatment could not be approved retroactively. The group then appealed to VA for help, Fuentes said. "It shouldn't require our involvement to have this paid," Fuentes told House committee members.

The Veterans Choice program was launched in November 2014 to give veterans who face lengthy wait times for care or live 40 miles or more from a VA facility the option to see a private physician. It has come under fire for failing to improve veterans' access to medical treatment since patients continue to face challenges making appointments or receiving approval for care. Providers have complained about the program as well, citing long delays in payments and disparate reimbursement rates. According to VA officials, the department paid less than 70 percent of its claims to providers within 30 days. In contrast, 99 percent of Tricare and Medicare claims from community providers are processed within 30 days.

In fiscal 2012, VA spent \$4.5 billion on care for veterans outside VA hospitals and clinics. That figure rose to \$10 billion in fiscal 2015, and the Obama administration has requested \$12 billion for community care programs in fiscal 2017. But despite vast sums of money appropriated for the programs, systemwide problems persist. Earlier this month, the VA Office of Inspector General found that for 64 percent of 450 appointments reviewed at a VA clinic in Colorado Springs, Colorado, veterans waited more than 30 days for care and none were offered a faster appointment through Veterans Choice.

The VA inspector general also found that in Tampa, Florida, eligible veterans were not offered care through Veterans Choice and VA medical center staff "inappropriately removed" veterans from the Choice eligibility list. "VA needs to improve program controls. Without adequate controls, VA's consolidation plan is at increased risk of not achieving its goal of delivering timely and efficient health care to veterans," said Gary Abe, deputy assistant inspector general for audit and evaluations. VA officials say they are working to solve the problems, starting with the late payments, by:

- Changing requirements of providers to furnish medical documentation along with the bills.
- Hiring more claims processing staff and establishing new productivity standards, said Dr. Baligh Yehia, Veterans Health Administration assistant deputy undersecretary for health for community care. "There should be no administrative burden that stands in the way of veterans getting care," Yehia said.
- Seeking to consolidate its private care programs into a single initiative, the New Veterans Choice program, and has asked Congress for legislative authority to implement the changes needed to jump-start the new program.
- Writing letters to credit bureaus to help restore former service members' credit ratings.
- Providing a toll-free number, 877-881-7618, for veterans to call if they have problems with adverse credit reports related to the Veterans Choice program.

Rep. Dan Benishek, a surgeon who chairs the House Veterans' Affairs personnel subcommittee, said the VA must fix the problem or risk losing willing program participants. "The overly bureaucratic, highly manual claims process ... does

not meet the standards. Community providers continue to report millions of dollars in past-due, unpaid claims and my office continues to hear regularly from providers who would like to serve veterans but they hesitate to take referrals from the VA because it is so difficult to get paid for their services," Benishek said.

Rep. Mark Takano (D-CA) said the VA is not entirely at fault for the problems with provider reimbursement. "A lot of the beating up on the department needs to be put into context," Takano said. "VA was never set up to be an insurer/payer. This is a revolution of sorts. The mindset has been that VA is a provider organization but now we are looking at other approaches, including a permanent program for care in the community, which means setting up a system to do both — a provider and payer organization. Let's make that a distinction." [Source: Military Times | Patricia Kime | February 11, 2016 ++]

VA Agent Orange Benefits

Policy Reassessment Complete / No change

A federal court had ordered the VA to reassess its policy denying Agent Orange benefits to Navy sailors who served in the Vietnam War. The VA's conclusion: They still don't qualify. The U.S. Department of Veterans Affairs has once again turned down an effort by Navy veterans to get compensation for possible exposure to Agent Orange during the Vietnam War. In a document released 5 FEB, the VA said it would continue to limit benefits related to Agent Orange exposure to only those veterans who set foot in Vietnam, where the herbicide was sprayed, and to those who were on boats in inland rivers. The VA compensates these veterans for a litany of associated illnesses, including diabetes, various cancers, Parkinson's Disease, peripheral neuropathy and a type of heart disease.

Advocates for some 90,000 so-called Blue Water Navy veterans who served off the coast of Vietnam have been asking the VA for more than a decade to broaden the policy to include them. They say that they were exposed to Agent Orange because their ships sucked in potentially contaminated water and distilled it for showering, drinking, laundry and cooking. Experts have said the distillation process could have actually concentrated the Agent Orange, which contained the toxic chemical dioxin and was used to kill vegetation and deny enemy cover. ProPublica and the Virginian-Pilot profiled their effort to gain coverage in September as part of an ongoing project to chronicle the impact of Agent Orange on vets and their families.

The U.S. Court of Appeals for Veterans Claims last April struck down VA rules that denied compensation for sailors whose ships docked at certain harbors in South Vietnam, including Da Nang. Those ports, the court determined, may have been in the Agent Orange spraying area. The court ordered the VA to review its policy. But on Friday, the VA largely stood by its old policy and once again asserted that there's no scientific justification or legal requirement for covering veterans who served off the coast. "Environmental health experts in VA's Veterans Health Administration have reviewed the available scientific information and concluded that it is not sufficient to support a presumption that Blue Water Navy Veterans were exposed to Agent Orange," the VA said in a fact sheet.

U.S. Sen. Richard Blumenthal (D-CT), the ranking member of the Senate Veterans' Affairs Committee, criticized the VA's decision. "Rather than siding with veterans, VA is doubling down on an irrational and inconsistent policy," he said in a statement. "Young sailors risked their lives during the Vietnam War, unaware that decades later, they and their children and grandchildren would still feel the toxic effects of exposure. Veterans who served offshore and in the harbors of Vietnam were exposed and deserve the presumption of service connection for Agent Orange-related diseases." Blumenthal and others are seeking adoption of the Blue Water Navy Vietnam Veterans Act, which would ensure that all vets exposed to Agent Orange are compensated. The VA opposes the legislation, as it has several previous iterations dating back to 2008.

The VA's new review rejecting benefits relied on a 2011 report by the respected Institute of Medicine, as well as other published research, according to the agency's fact sheet. The Institute of Medicine report said there was no way to prove Blue Water vets were exposed to the chemicals, but it identified plausible routes that Agent Orange could have traveled out to sea and into a ship's distillation system. Although military policy at the time recommended against distilling water closer than 10 miles to shore — where the chemical concentration would have been highest — veterans said doing so was often unavoidable, and their commanding officers routinely ordered it. The VA said it is working with

veterans groups to “initiate a groundbreaking study of Blue Water Navy Veterans health outcomes. We hope to have data gathered and analyses published in 2017.”

Veterans called the VA’s decision a betrayal. John Wells, a Louisiana lawyer who has spent more than a decade advocating for Blue Water veterans, said his group would continue challenging the VA and push for legislation that would mandate coverage for the Blue Water veterans. “It wasn’t completely unexpected. We’re used to being betrayed by the VA,” Wells said. “We’re going to fight this thing until we’re done or dead.” Jim Smith, who served aboard the ammunition ship Butte, has been diagnosed with prostate cancer and believes that Agent Orange exposure may have played a role. “My feeling is the VA is thumbing their nose and sending the middle finger back to the Blue Water people,” he said. “It’s like nobody at the VA has any kind of science background whatsoever.” Blue Water vets — so named to set the sailors apart from their Brown Water Navy counterparts, who patrolled the murky rivers of South Vietnam — were initially deemed eligible for compensation under the Agent Orange Act of 1991, only to have the VA change its interpretation a decade later. [Source: ProPublica | Charles Ornstein and Terry Parris Jr. | February 8, 2016 ++]

Vietnam Veterans Memorial Update

Limit on Left Objects

The National Park Service is considering limiting the items it collects at the Vietnam Veterans Memorial. The agency said in a news release 9 FEB that it will only keep items left at the memorial that are personal artifacts of soldiers whose names appear on the memorial; Vietnam War military service items; and protest, activism and advocacy materials related to the war. Objects left at the wall with no direct connection to a Vietnam veteran or the Vietnam War will not be kept. The Vietnam Veterans Memorial Collection includes more than 400,000 objects left at the memorial since its dedication in 1982. The National Park Service is accepting public comment on the proposed changes. Comments are accepted at <https://parkplanning.nps.gov/commentForm.cfm?documentID=70782>. [Source: The Associated Press | February 9, 2016 ++]

Vet Unemployment Update

JAN Rate Remains Low

The strong veteran employment numbers charted throughout 2015 continued in the first month of the new year, government data indicate. The unemployment rate for post-9/11 veterans was 5.7 percent in January, according to the Bureau of Labor Statistics, equal to the previous month's rate and in line with the 5.8 percent average for all of 2015's unemployment reports. The unemployment rate was 4.9 percent in January, down a hair from December's 5 percent rate, with the U.S. tacking on 151,000 jobs. The January unemployment rate for the youngest generation of veterans is up a bit from the all-time low of 4.2 percent recorded in November. Still, 5.7 percent is the lowest unemployment rate ever recorded in a January report for this group, for whom unemployment data dates back to fall 2008. The next lowest January unemployment rates were more than 2 full percentage points higher: 7.9 percent in 2014 and 2015. [Source: Military times | George Altman | February 5, 2016 ++]

Veterans Omnibus Bill

Lawmakers May be Headed Towards One

Lawmakers could be headed toward a veterans omnibus bill covering a host of health, education and employment issues after House members passed a package of nine veterans-themed measures the evening of 9 FEB. The flurry of legislation came after a day of debate and discussion about veterans issues on the House floor. All of the measures were passed by voice vote without objection, but will need Senate action and the president's signature before they can become law.

House Majority Leader Kevin McCarthy (R-CA) said the moves were a needed push to help “our retired servicemen and women who have been neglected by a broken Department of Veterans Affairs.” He promised more focus on the issues in months to come. “It has been several years since the corruption and dysfunction at the VA was

exposed, and quite frankly, it is appalling that we must continue to pass bills to fix the countless problems that have been ignored,” he said. “We continue to hear that change at the VA is on the way, but as the bureaucracy remains unchanged, our veterans continue to wait for care and benefits.” House Veterans' Affairs Committee Chairman Jeff Miller (R-FL) said the bills together help “rein in the incompetence that permeates VA’s construction efforts, end the egregious taxpayer abuse some unscrupulous and greedy schools are committing on a daily basis, and most importantly, honor our veterans while improving and expanding the benefits they have earned.”

The most controversial item on the legislative slate was a measure that would halve the housing stipend for children of troops attending college with transferred Post-9/11 GI Bill benefits. Veterans advocacy groups opposed that portion of the so-called Veterans Employment, Education, and Healthcare Improvement Act, which also included provisions to restrict GI Bill payouts for flight schools and increased eligibility for children of some veterans. Supporters of the measure did not address the issue on the House floor, but several Democrats said they hope the housing stipend cut is reconsidered in the Senate. Among the other bills approved Tuesday:

- The Construction Reform Act, which would require VA to hire an assistant inspector general for construction projects. Lawmakers have criticized lax oversight of those projects, several of which have faced multimillion-dollar cost overruns.
- The American Heroes COLA Act, which would permanently tie veterans’ annual cost-of-living adjustments to Social Security and make their annual adjustments automatic.
- The Career-Ready Student Veterans Act, which would require educational programs eligible for GI Bill payouts to meet state licensure and certification standards.
- The Female Veteran Suicide Prevention Act, which would boost focus and oversight on suicide prevention programs targeted at women veterans.
- The Failing VA Medical Center Recovery Act, which would require VA to assign special management teams to underperforming VA medical facilities to provide faster solutions for patients using those services.

Lawmakers in the House and Senate have discussed the possibility of crafting a larger veterans omnibus bill later this year, to include both the measures passed Tuesday and a host of other separate bills under consideration by both chambers. But no further details have been finalized on when that plan might be introduced. [Source: Military Times | Leo Shane | February 10, 2016 ++]

End of Service Physicals

H.R.4251

On Dec. 16, 2015, Representative Mike Coffman (R-CO) along with 29 House colleagues, introduced H.R.4251, the Guard and Reserve Equal Access to Health Act. The American Legion-initiated bill was based upon the legislative mandate in Resolution 182, which requires the Department of Defense to provide end-of-service physical examinations to all retiring and separating servicemembers within 90 days of the end of their military service. If passed, the bill will ensure servicemembers of the Guard and reserve obtain an end-of-service physical at completion of military service. Today, both reservists and active-duty military are required to complete a physical examination when they are processed into the military. But under current law, only active-duty servicemembers are required to complete an end-of-service physical. Providing reserve component servicemembers with an end-of-service physical will document those health conditions that may be service connected to determine eligibility for VA health care. The end-of-service health records will also help expedite the disability compensation claims process for the veterans.

When he introduced the bill, Rep. Coffman, a Marine Corps combat veteran who was mobilized and deployed twice to the Middle East, said, "These reservists are often deployed and endure many of the hardships of war....citizen soldiers deserve the same consideration as their active-duty counterparts when they transition out of the military and this legislation is a further step in that direction." Rep. Coffman serves on both the House Armed Services and House Veterans’ Affairs committees, where he is the chairman of the Subcommittee on Oversight and Investigations. He is the only member of Congress to have served in both Iraq wars. Since the introduction of this legislation, the American Legion’s Legislative Division staff have held a number of face-to-face meetings with congressional staff, seeking additional cosponsors.

If your representative is a co-sponsor of this bill, you are requested to contact them and thank them for their support and encourage them to pass this legislation. If your representative is not a co-sponsor, contact them and ask them to become a co-sponsor by contacting the office of Rep. Coffman. Go to <http://www.house.gov/legionrepresentatives/find> and enter your zip code if you are not aware of the contact number go to. [Source: American Legion | Brett Reistad | February 2, 2016 ++]

GI Bill Update

VA Provider Equity Act (H.R.3016) Impact

Military dependents using transferred Post-9/11 GI Bill benefits would see their housing stipends cut in half under legislation passed 9 FEB by the House of Representatives. That stipend is one of the most valuable parts of the Post-9/11 GI Bill, calculated in most cases based on the Basic Allowance for Housing, or BAH, that active-duty service members would receive if stationed where the school is located. Depending on where and how GI Bill users attend class, it can put as much money in their pockets for housing costs as it puts in university coffers for tuition costs.

Iraq and Afghanistan Veterans of America has expressed strong opposition to the proposal, which is included in a bill that also has other provisions on veterans education, health care, jobs and transition out of the military. In letters to the leaders of veterans committees in both the House and Senate, dated 5 FEB, IAVA Chief Policy Officer Matt Miller asked the lawmakers to stand with our members in opposing any cuts to, or reduction of benefits in, the Post-9/11 GI Bill now or in the future. "These cuts will negatively impact our country's ability to attract and retain the military personnel required to maintain our national security," the letter said. "Such cuts will also be counter to the benefits communicated to the many who began their military service following the establishment of the Post-9/11 GI Bill." The measure would not affect the stipends of veterans using Post-9/11 GI Bill benefits they earned themselves, only dependents using transferred benefits.

Also included in the bill is a provision restricting the use of the Post-9/11 GI Bill for flight training, which has generated additional opposition. Chris Neiweem, a lobbyist who worked previously for IAVA and now represents an aviation school, said the restriction would not be necessary with proper cost control measures from the Veterans Affairs Department. "This would be a fairly significant rollback of the GI Bill benefit," said Neiweem, vice president of the firm SRB Strategic. An eleventh-hour change to Department of Veterans Affairs legislation scrapped a plan by lawmakers to increase the service obligation required for troops who wish to transfer their Post-9/11 GI Bill benefits to their spouses or children. The bill originally included a provision requiring troops to serve 10 years on active duty plus a two-year service obligation to qualify for the transfer benefit. Instead, lawmakers opted to keep the requirement at the current six years of service, plus a four-year service obligation. Other items in the bill included:

- Extend the recently enacted Gunnery Sgt. Fry Scholarships to surviving spouses who lost their military spouse between 2001 and 2006. This group of survivors will have until 2021 to use GI Bill-equivalent benefits to complete college or job training.
- Make this same group eligible for matching additional funds by private colleges and the VA under the Yellow Ribbon program
- Raise Medal of Honor recipients to the first enrollment priority group and exempt them from all co-payments for inpatient, outpatient, long-term care, and prescriptions.
- Authorize newborn child care for women veterans receiving VA maternity care with post-delivery services for 14 days if the veteran delivered the child in a VA facility or contracted VA facility.
- Extend service credit for GI Bill eligibility purposes for time spent in medical hold by wounded, ill, and injured members who now may spend as much as a year or two in this status without GI Bill service credit.

[Source: Military Times | Leo Shane & Amy Bushatz | February 8 & 10, 2016 ++]

VA Appeals Update

H.R.4116 | Express Appeal Option Bill

A bipartisan group of senators is offering legislation aimed at cutting down the amount of time it takes for the Department of Veterans Affairs (VA) to handle a disability claim. Sens. Dan Sullivan (R-AK), Bob Casey (D-PA), Dean Heller (R-NV) and Jon Tester (D-MT) have introduced legislation to create a five-year pilot program that would serve as a voluntary alternative to the VA's current appeals process for disability claims. Under their proposal, veterans would be able to file an "express" appeal after the VA hands over a decision on a disability claim, which the lawmakers suggested could cut hundreds of days of wait time out of the current appeals process. Veterans can appeal the VA's original decision for a myriad of reasons, including disagreeing with the department about the severity of their disability.

According to weekly VA data released 1 FEB, the VA's Veterans Benefits Administration (VBA) currently has more than 300,000 appeals pending. A fiscal year 2014 report found that on average it can take more than 1,000 days between the time an appeal is filed and when the Board of Veterans' Appeals (BVA) makes a decision. Sullivan said that he hopes the Senate legislation will "create a less-bureaucratic appeals express lane" for the VA to handle appeals, adding that it is "astounding" that veterans can wait almost three years for a decision. Casey added that the current timeline is unacceptable. "It is crucial that we work to ensure that veterans get timely and accurate decisions on their appeals," he said.

As part of the legislation, if a veteran decided to opt for an "express" appeal but later changed their mind, they would be able to go back to the current appeals process without being negatively impacted. To help save time, the "express" process would skip over a current step in the appeals process when VA officials collect additional evidence after a veteran files an appeal. The legislation comes after lawmakers have pushed the VA for years to reduce the number of pending appeals from veterans. VA Secretary Bob McDonald called for a "simplified appeals process" while testifying before the Senate Veterans Affairs Committee. [Source: The Hill | Jordain Carney | February 1, 2016 ++]